



STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
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April 15, 2015

To: The Honorable Gilbert S.C. Keith-Agaran, Chair,  
The Honorable Maile S.L. Shimabukuro, Vice Chair, and  
Members of the Senate Committee on Judiciary & Labor

Date: Friday, April 17, 2015  
Time: 1:25 p.m.  
Place: Conference Room 224, State Capitol

From: Leonard Hoshijo, Deputy Director  
Department of Labor and Industrial Relations (DLIR)

**Re: H.C.R. 168 H.D. 2/ H.R.104 H.D. 2 Requesting the Department of Labor and Industrial Relations to Convene a Working Group to Streamline the State's Workers' Compensation Process.**

**I. OVERVIEW OF PROPOSED LEGISLATION**

H.C.R. 168 HD2 and H.R. 104 HD2 requests the Department of Labor and Industrial Relations to convene a working group to streamline the State's workers' compensation process under chapter 386, Hawaii Revised Statutes.

The Department strongly supports the measures as the best means to obtain input from the affected stakeholders in the effort to modernize the workers' compensation system.

The Director of DLIR or the Deputy Director shall serve as Chairperson and the working group shall include the following:

- 1) The Director of Human Resources Development or the Director's designee;
- 2) Insurers that issue workers' compensation insurance policies in the State;
- 3) Attorneys who represent employers and employees in workers' compensation claims;
- 4) A representative of a mutual benefit society operating in the State;
- 5) A representative of a health maintenance organization operating in the State;

- 6) Health care providers;
- 7) Any other persons deemed appropriate by the Chairperson of the working group;
- 8) One person appointed by the President of the Senate; and
- 9) One person appointed by the Speaker of the House of Representatives.

The working group shall submit a report of its findings and recommendations, including any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2017.

The Legislature further requests that the working group consider streamlining the filing process for workers' compensation claims by converting to a computerized system.

## **II. CURRENT LAW**

There is no current statute or working group organized to streamline the workers' compensation process.

Section 12-10-61(d), Hawaii Administrative Rule, pertaining to Filing of reports, allows electronic submission of reports.

## **III. COMMENTS ON THE HOUSE CONCURRENT RESOLUTION**

The Department strongly supports HCR 168 HD2/HR 104HD2 to organize a working group of interested parties to improve the processing of workers' compensation claims and decisions and to streamline the workers' compensation process. Such a working group will help the Department fulfill the purposes of the workers' compensation law: to ensure timely payment of wage loss benefits and medical care to the injured worker to assist them in returning to work as quickly as possible.

The DLIR notes that the intent of this measure is related to a budget item found in the House Draft of the budget bill (HB500):

HOUSE ADJUSTMENT: 905,000 A 905,000 A  
ADD FUNDS FOR DISABILITY COMPENSATION PROGRAM (LBR183)  
FOR BUSINESS PROCESS OPTIMIZATION ANALYSIS AND  
DEVELOPMENT OF RFP FOR MODERNIZATION OF CASE  
MANAGEMENT SYSTEM.

The purpose of the workers' compensation law is to ensure timely payment of wage loss benefits and medical care to the injured worker to assist them in returning to work as quickly as possible. The DCD is almost exclusively reliant on

paper processes that include filing of the initial claims, interim medical reports, carrier's reports and attorney correspondences, requests for hearings, and Independent Medical Exam (IME) orders. The documents received must be manually time stamped, referred to the proper sections to handle, matched and filed in the claimant's case files, and pertinent information inputted into computers.

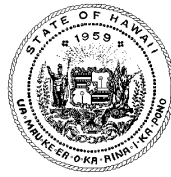
Since 2008, DCD has lost about 31% of its staff due to the State mandated reduction in force, retirements, and not being allowed to hire additional staffing due to insufficient funding. This resulted in a tremendous backlog in filing, reviewing issues for hearings, scheduling of hearings, issuing of decisions, checking on compliance issues, reviewing and approving settlement documents, etc. It often would take about 6 to 9 months to schedule a case for hearings. During this time, billing dispute issues were assigned to the Hearings Branch and there was a 2,000 case backlog as of January 2013.

The Enforcement Branch also has lost 10 positions due to reduction in force and retirements and was assigned processing of Certificates of Compliance which increased more than 3 times by 2014. Investigators had to do more clerical work and had less time to monitor and enforce compliance with the temporary disability insurance (TDI), workers' compensation (WC), and prepaid health care (PHC) laws, resulting in a 58% increase in non-complying employers from 2008 to 2014.

The resolution states that injured claimants have complained that scheduling an IME can take longer than a year despite repeated requests and inquiries. Scheduling an IME is usually done by the insurance carrier and not by the DCD. The IME assists the carrier in determining compensability of the claim, gives another doctor's opinion on treatment, and provides a rating to determine permanent partial disability benefits.

Delays in approving settlement documents are both due to lack of staff or errors as well as omissions in the agreement, resulting in the settlement document being sent back to the carrier for corrections. Payments following the approval of a settlement agreement usually are made within 30 calendar days after approval of the agreement or as soon thereafter as possible.

DAVID Y. IGE  
GOVERNOR



JAMES K. NISHIMOTO  
DIRECTOR

RANDY BALDEMOR  
DEPUTY DIRECTOR

**STATE OF HAWAII**  
**DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT**  
235 S. BERETANIA STREET  
HONOLULU, HAWAII 96813-2437

April 14, 2015

**TESTIMONY TO THE  
SENATE COMMITTEE ON JUDICIARY AND LABOR**

For Hearing on Friday, April 17, 2015  
1:25 p.m., Conference Room 224

BY

JAMES K. NISHIMOTO  
DIRECTOR

**House Concurrent Resolution No. 168, H.D. 2,  
Requesting the Department of Labor and Industrial Relations  
to Convene a Working Group to Streamline  
the State's Workers' Compensation Process**

**WRITTEN TESTIMONY ONLY**

TO CHAIRPERSON GILBERT KEITH-AGARAN AND MEMBERS OF THE  
COMMITTEE:

Thank you for the opportunity to provide comments on H.C.R. 168, H.D. 2.

H.C.R. 168, H.D. 2, requests the Department of Labor and Industrial Relations to convene a working group to streamline the State's workers' compensation process.

The Department of Human Resources Development (DHRD) has a fiduciary duty to administer the State's self-insured workers' compensation program and its expenditure of public funds. In that regard, DHRD respectfully submits this comment on the resolution.

As a public employer which is self-insured and self-administered for its workers' compensation liabilities, the State has unique issues and interests that it wants to contribute to any dialogue about streamlining the workers' compensation process, including but not limited to the filing of claims by converting to a computerized system. We look forward to being a full and active participant in the working group and helping

to build a more streamlined, robust, and responsive workers' compensation system for all stakeholders.



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**Alison H. Ueoka**  
Executive Director

## TESTIMONY OF ALISON UEOKA

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COMMITTEE ON JUDICIARY & LABOR  
Representative Gilbert S.C. Keith-Agaran, Chair  
Representative Maile S.L. Shimabukuro, Vice Chair

Friday, April 17, 2015  
1:25 p.m.

### **HCR 168, HD2**

Chair Keith-Agaran, Vice Chair Shimabukuro, and members of the Committee, my name is Alison Ueoka, Executive Director of the Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately thirty-six percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council supports HCR 168, HD2 which forms a working group to streamline the workers' compensation system in Hawaii, including evaluating a computer system for the Disability Compensation Division of the Department of Labor and Industrial Relations.

Hawaii Insurers Council would like to be a part of this working group as our members represent approximately thirty-six percent of the property and casualty market in the State of Hawaii and we stand ready to assist in this important endeavor.

Thank you for the opportunity to testify.

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# GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

April 17, 2015

TO: HONORABLE GIL KEITH-AGARAN, CHAIR, HONORABLE MAILE SHIMABUKURO, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: **SUPPORT OF HCR 168, HD2/ HR 104, HD2 REQUESTING THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS TO CONVENE A WORKING GROUP TO STREAMLINE THE STATE'S WORKERS' COMPENSATION PROCESS.**

HEARING

DATE: Thursday, April 17, 2015  
TIME: 1:25 p.m.  
PLACE: Conference Room 224

Dear Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of approximately five hundred eighty general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

GCA supports HCR 168, HD2 & HR 104, HD2 as a means to uncover issues and solutions about how the current Worker's Compensation system can be improved within the state system, furthermore it would provide a forum to further discuss how the current workers compensation system can be improved through on electronic means by using technology. Further study of the state system may reveal some solutions that can be considered by the private sector. Additionally, the working group may be able to assist in resolving the contentious issues surrounding what has been commonly referred to as Independent Medical Examination or IME. GCA believes the IME should be correctly referred to as an Employer's Medical Examination (EME) as referenced in law pursuant to Section 386-79, Hawaii Revised Statutes. It is really the employer's requested examination of an injured worker who the employer may feel is not receiving appropriate treatment and also to determine permanent impairment rating. It is not an "independent" medical exam.

GCA is deeply concerned with the measure that is continuing to Conference Committee, particularly SB 1174, which would completely overhaul the current EME procedure and proposes to require the employer's physician be chosen by mutual agreement, leaving the employer with no tool to determine whether appropriate care is being offered to the injured worker; while the employee would continue to be able to choose its own treating physician, who would also determine its permanent impairment rating.

The working group proposed pursuant to these Resolutions will provide an inside look at how the process is working and where there may be flaws that require correcting. This will provide a venue where all parties can collaborate on appropriate solutions that would allow the workers compensation to work as it was intended.

Thank you for the opportunity to share our support for these measures.



The Twenty-Eighth Legislature  
Regular Session of 2015

THE SENATE

Committee on Judiciary and Labor  
Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair  
Hawaii State Capitol, Room 224  
Friday, April 17, 2015; 1:25 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.C.R. 168, HD2  
Requesting the Department of Labor and Industrial Relations to Convene  
a Working Group to Streamline the State's Workers' Compensation Process**

The ILWU Local 142 **supports the intent** of H.C.R. 168, HD2, which request the Department of Labor and Industrial Relations (DLIR) to convene a working group to streamline the State's workers' compensation process.

Hawaii's workers' compensation law was enacted in 1915 to provide wage loss compensation and medical care to workers who suffer a work-related injury. The law presumes that an injury is work-related if it arises in the course of employment or at a workplace and places the burden on the employer to provide substantial evidence to the contrary. In exchange for this presumption, the employee is prohibited from suing the employer for work-related injuries or illnesses.

The ultimate goal is to return the injured worker to a medical status that will allow his return to employment, either with his employer or another, as soon as possible. The work injury was accidental. The law is intended to prevent further injury—physical, mental and financial—because of the accident.

For most of the past 100 years, the law has worked reasonably well. Employees generally received compensation when injured or ill due to the job while employers were free from the threat of legal action for the injury or illness. The system was not perfect, with compensation often insufficient, but the process was generally fair.

However, over the past several years, the process has become increasingly adversarial. Some employers routinely deny liability for claims and drag out the process to determine compensability. As a result, needed treatment for the employee to return to work and monetary compensation to survive during the disability period are also denied to the worker. Attorneys are, more often than not, brought in to handle the claims (in addition to insurance adjusters), causing additional costs for employers and requiring employees to hire their own attorneys, which was not the original intent of the law. Worse, for the past 20 years, compensation to providers has been capped, resulting in fewer physicians and other providers willing to treat injured workers.

While the original intent of H.C.R. 168 was for computerization to streamline the process, we believe a more comprehensive assessment of the law, administrative rules, and practices is needed. The workers' compensation system must truly reflect the original and ultimate goal: to provide compensation and treatment in a timely manner to allow an injured worker to return to gainful employment as soon as possible.

The ILWU supports the intent of H.C.R. 168, HD2 and hope it can be expanded. Thank you for considering our testimony.



**Testimony to the Senate Committee on Judiciary and Labor  
Friday, April 17, 2015 at 1:25 P.M.  
Conference Room 224, State Capitol**

**RE: HOUSE CONCURRENT RESOLUTION 168 HD2 REQUESTING THE  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS TO CONVENE A  
WORKING GROUP TO STREAMLINE THE STATE'S WORKERS' COMPENSATION  
PROCESS**

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** HCR 168 HD2, which requests the Department of Labor and Industrial Relations to convene a working group to streamline the state's workers' compensation process.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber supports this measure as a crucial step to obtain input from employers and employees alike on how to best improve the workers' compensation process. This working group would help reinforce the purpose of the workers' compensation law, which is to ensure timely payment of wage loss benefits and medical care to the injured worker to assist them in returning to work as quickly as possible.

The Disability Compensation Division (DCD) has seen a severe reduction in workforce, leading to a backlog in reviewing claims, filing, scheduling, etc. With the reduced staff, workers' compensation claims have been accumulating with few actually moving forward. Additionally, the DCD is still operating with an antiquated paper process that adds another delay to the system.

As there are many factors contributing to the backed up workers' compensation process, the working group proposed in this measure is needed to develop a more efficient method for the workers' compensation system.

Thank you for the opportunity to testify.

# DENNIS W. S. CHANG

*Attorney at Law, A Limited Liability Law Corporation*

WORKER'S RIGHTS - LABOR LAW  
WORKER'S COMPENSATION  
SOCIAL SECURITY DISABILITY  
LABOR UNION REPRESENTATION  
EMPLOYEES RETIREMENT SYSTEM  
BODILY INJURIES

April 16, 2015

THE SENATE  
THE TWENTY-EIGHTH LEGISLATURE  
REGULAR SESSION OF 2015

To: Senator Gilbert S. C. Keith-Agaran, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair  
And Members of the Committee on Judiciary and Labor

Date: Friday, April 17, 2015  
Time: 1:25 p.m.  
Place: Conference Room 224  
State Capitol  
415 South Beretania Street  
Honolulu, Hawai'i 96813

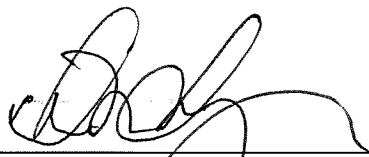
**Re: Strong Support for Passage of HCR 168, HD2**

I strongly reiterate my support of the passage of HCR 168, HD2. I also repeat that the resolution should be amended to include the Chair of the Labor and Industrial Relations Appeals Board (Board). The decisions issued by the Board are an integral part the entire Workers' Compensation (WC) law and process.

Contrary to the intent underlying the enactment of the WC statute in 1915, there are many current changes now required to streamline the WC process. The process was intended to be unquestionably fair, prompt, and informal, but it has become increasingly complex and litigious. Injured workers are forced to hire attorneys or represent themselves against veteran adjusters or defense attorneys. In the end workers are forced to endure needless delay, undue physical and emotional harm, and economic ruin.

It is most appropriate to have a study to review and enact critical corrective measures on the 100<sup>th</sup> anniversary of the passage of the WC statute. I strongly support this resolution and ask that it be passed out of this committee.

Thank you for allowing me to submit this testimony.

  
\_\_\_\_\_  
Dennis W. S. Chang  
Labor and Workers' Compensation Lawyer

DILLINGHAM TRANSPORTATION BUILDING

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TESTIMONY IN SUPPORT OF HCR 168, HD2  
REQUESTING THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
TO CONVENE A WORKING GROUP TO STREAMLINE THE STATE'S  
WORKERS' COMPENSATION PROCESS  
COMMITTEE ON JUDICIARY AND LABOR

Friday, April 17, 2015, 1:25 p.m.

Mr. Chairman, members of the Committee, I am attorney Wayne Mukaida. I have been in practice since 1978. Since 1989, I have devoted a substantial portion (over 26 years) of my legal practice to representing injured workers.

I strongly support HCR 168, HD2 which requests the department of labor and industrial relations to convene a working group to streamline the state's workers' compensation process. Please consider the following amendments.

I. Ensure that the working group represents all persons with interests in workers' compensation.

The Concurrent Resolution proposes that the Director or Deputy Director of the Department of Labor and Industrial Relations, acting as Chairperson of the group, invite persons to serve as members from 7 groups, but the composition of the group must be improved. The list seems to be weighted unfairly in favor of employer and insurers with 5 member groups. Secondly, workers' compensation interests overlap with other State interests health care, economics, and computer technology.

The Chairperson may invite "any other persons deemed appropriate", however persons from the following groups should also be specifically listed:

- a. Injured workers,
- b. Vocational rehabilitation counselors,
- c. Nurse case managers,
- d. University of Hawaii-West Oahu, Center for Labor Education and Research, or labor economists,
- e. the Office of Information Management & Technology, and a representative from the entity handling computer systems in the Department of Labor and Industrial Relations, and
- f. the Hawai'i Health Connector.

## II. The Working Group Should be Insulated from Politics and Economic Pressures.

The 1972 National Commission on Workers' Compensation Laws produced very remarkable results. The Commission held hearings and meetings around the country and its members were shocked by its findings. It concluded that the state workers' compensation system were "inadequate and inequitable." Wage replacement and benefit levels to support workers and their families were so low that many workers were unprotected. They found that medical care often did not meet basic needs.

The Commission met in a safehouse in Virginia to craft its proposals, isolated from the political winds of the times. They unanimously agreed to recommend 19 essential minimum standards for state-run systems with adoption of an enforcement driver that was to have resulted in Federal action.

The United States Congress adopted the 1972 amendments to the Longshoreman and Harbor Workers' Compensation Act, which included many of the recommendations of the Commission. Many states adopted many of the suggested changes. The contrast between state workers' compensation programs that existed before and after 1972 has been described as "stunning".

In order to provide Hawaii's working group with the confidence to be independent and productive, consideration should be given to allowing the working group to meet without political and economic pressures. For example, there are relatively few workers' compensation carriers in Hawai'i, and as a result, workers' compensation defense attorneys are under economic pressures not to take positions adverse to carriers. Just as the 1972 National Commission was able to meet in a safehouse, some consideration should be given to allowing Hawaii's working group and exemption from Sunshine Laws, and be allowed to meet privately.

## III. CONCLUSION.

This July marks the 100<sup>th</sup> anniversary of the adoption of workers' compensation legislation in Hawai'i. There have been many social, economic, and legislative changes since that time. An overall examination of the entire system is long overdue, and the establishment of a working group would be a good first step leading to effective and necessary changes.

Thank you for considering my testimony.

WAYNE H. MUKAIDA